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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EVERETT HOGGE and PRISCILLA
HOGGE,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, *et al*,

Defendants.

) Case No.: C 07 2873 EDL

) **PLAINTIFFS' LOCAL RULE 1-5(k)**
) **REQUEST FOR INTERVENTION OF**
) **THE GENERAL DUTY JUDGE AND**
) **SUPPLEMENT TO MOTION FOR**
) **ORDER SHORTENING TIME FOR**
) **BRIEFING AND HEARING OF MOTION**
) **FOR REMAND; DECLARATION OF**
) **STEPHEN HEALY IN SUPPORT**
) **THEREOF**

) Current Hearing Date: July 10, 2007

) Proposed Hearing Date: June 8, 2007

) Time: 9:00 a.m.

) Courtroom: 8, 19th Floor

) **General Duty Judge:** Hon. Charles R. Breyer

) Filed simultaneously in:

) Courtroom: E, 15th Floor

) Magistrate Judge: Hon. Elizabeth D. Laporte

I. INTRODUCTION

Intervention of the General Duty Judge is immediately required to effect substantial justice in this case for two reasons: (1) to keep the present state court jury, time-qualified and impaneled from a venire of some 200 citizens, and who have already heard 5 days of argument

and evidence; and (2) to best ensure that the Plaintiff does not die before a verdict can be rendered in this case.

Specifically, asbestos defendant JOHN CRANE, INC., filed a frivolous and meritless Notice of Removal in the middle of a San Francisco Superior Court asbestos personal injury jury trial, in a not-so-thinly-veiled attempt to delay the case long enough for the Plaintiff, a retired shipyard pipefitter, to die (Mr. HOGGE, who suffers from mesothelioma, now weighs 135 lbs., has undergone the removal of his left lung, and painful courses of radiation and chemotherapy).

This litigation tactic has been used four times by asbestos defense lawyers in 2007 against clients of the undersigned's law firm, with the following results:

Case Name	State Court Action – County & Case Number	Federal Court Action – Judge and Case Number	State Court Trial Date	Date of Notice of Removal	Date of Remand	Date of Death of Plaintiff
Joseph Brewster, et ux., v. A.W. Chesterton Company, et al.,	456422 (San Francisco)	C 07-01688 WHA (Hon. William H. Alsup)	4/2/07	3/26/07	4/6/07	N/A – client is alive
Gene Murray, et ux., v. A.W. Chesterton Company, et al.,	RG05241225 (Alameda)	C 07-00843 WDB (Hon. Wayne D. Brazil)	1/19/07	2/9/07	Case remanded per stipulation of the parties as the parties were not diverse and the federal court did not have subject matter jurisdiction over the action	5/26/07
Andres Ginez v. A.W. Chesterton Company, et al.,	455659 (San Francisco)	C 07-1701 SBA (Hon. Sandra Brown Armstrong)	3/5/07	3/26/07	4/30/07	N/A – client is alive
Evertt Hogge, et ux v. AW Chesterton, et al	452846 (San Francisco)	C 07-2873 EDL (Hon. Elizabeth D. Laporte)	5/7/07	6/1/07	Motion pending	N/A – client is alive

In each of the cases above-referenced, the plaintiff was (or is) dying of mesothelioma, an invariably fatal cancer, whose only scientifically known cause is that of asbestos exposure. See, e.g., Skip Fordyce, Inc. v. WCAB (1983) 149 Cal. App. 3d 915, 928-929 “... The medical evidence was that mesothelioma is caused exclusively by asbestos exposure”; Sparks v. Owens-

1 Illinois, Inc. (1995) 32 Cal. App. 4th 461, 469 (“Dr. Allan Smith, a professor of epidemiology at
 2 the University of California, testified that the only established cause of mesothelioma in humans
 3 was asbestos exposure ...”; Chevron USA v. Work Comp Appeals Board (1990) 219 Cal. App.
 4 3d 1265, fn 3 “Mesothelioma is recognized in the medical community as an asbestos-related
 5 disease.” Hamilton v. Asbestos Corp. (2000) 22 Cal. 4th 1127, 1135 (“Observation has
 6 established a strong linkage between mesothelioma and exposure to asbestos fibers.”)

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 8 Most recently in the Andres Ginez v. A.W. Chesterton Company, et al., case, referenced
 9 immediately above, Judge Brown-Armstrong’s comments from the bench in remanding the case
 10 back to state court, excoriated asbestos defense counsel for employing this tactic to prevent a
 11 dying plaintiff from having his day in Court while the case was in trial. Her comments were
 12 typical, in the experience of the undersigned, of federal judicial attitudes of asbestos defendants
 13 who employ these tactics.

14 Here, the Plaintiffs have high confidence that once the matter is heard, the case will be
 15 remanded back to state court.

16 However, if the case is not remanded back to state court by Friday, June 8, 2007, the June
 17 4, 2007, order of San Francisco Superior Court judge, the Hon. Diane E. Wick, is that the jury
 18 that has been picked from a venire of 200 citizens and who has heard one week of testimony thus
 19 far, will be dismissed, as it is not possible for that time-qualified jury to be held any longer while
 20 we await a decision of the United States District Court..

21 Given Magistrate’s La Porte’s vacation schedule and the lack of a stipulation from JOHN
 22 CRANE, INC., pursuant to Title 28, U.S.C. Section 636(c), to consent to the use of a Magistrate
 23 for all purposes, it is simply not possible to keep the current jury in the state court without
 24 intervention of the General Duty Judge, and it is unlikely that the matter can be resolved in Mr.
 25 HOGGE’s lifetime unless intervention is granted.

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II. RELEVANT LAW

Rule 1-5(k) of the Civil Local Rules of the Northern District of California provides that

The "General Duty Judge" is the Judge at each division or location of the Court designated by the Chief Judge to act for the Court in matters for which there is no assigned Judge, or when the assigned Judge is unavailable. The name of the Judge serving as General Duty Judge shall be made available by the office of the Clerk.

CONCLUSION

For the above reasons, plaintiffs respectfully request that this Court shorten the time for briefing and hearing and simply rule on the matter on June 8, 2007. Plaintiffs further request that this Court enter an order preventing transfer of this action to the federal Asbestos Multi-District Litigation until after the Motion for Remand is decided.

DATED: June 7, 2007

PAUL, HANLEY & HARLEY LLP



Stephen J. Healy, Esq.
Attorneys for Plaintiffs